

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency
Office of General Counsel



MLA 06-01
January 30, 2006

Memorandum of Legal Advice

Issue

The Child and Family Services Agency (CFSA) Office of the General Counsel was asked the following questions by the CFSA Office of Youth Development (OYD):

Under the Educational and Training Vouchers (ETV) Program established by the John H. Chafee Foster Care Independence Program, 42 USC § 677 (Chafee):

1. Can a part-time student receive ETV funds?
2. Is ETV available for a youth who is 18 years of age or older and committed to the state's child welfare agency?

Conclusion

For the reasons below, we have concluded that a part-time student may receive ETV funds and ETV is available for a committed youth who is 18 years of age or older.¹

Analysis

ETV legislation The ETV program is established by Chafee subsection (i):

- (i) Educational and training vouchers. The following conditions shall apply to a State educational and training voucher program under this section:
 - (1) Vouchers under the program may be available to youths otherwise eligible for services under the State program under this section.

¹ OYD did not ask when ETV participation ends. Generally, participation in the ETV program ends when the youth reaches 21 years of age; however, it may continue until the youth is age 23 if the youth was participating in the ETV program when the youth became age 21 (Chafee subsection (i)(3)).

(2) For purposes of the voucher program, youths adopted from foster care after attaining age 16 may be considered to be youths otherwise eligible for services under the State program under this section.

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(3) The State may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as they are enrolled in a postsecondary education or training program and are making satisfactory progress toward completion of that program.

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(4) The voucher or vouchers provided for an individual under this section--

(A) may be available for the cost of attendance at an institution of higher education, as defined in section 102 of the Higher Education Act of 1965 [20 USCS § 1002]; and

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(B) shall not exceed the lesser of \$ 5,000 per year or the total cost of attendance, as defined in section 472 of that Act [20 USCS § 1087II].

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(5) The amount of a voucher under this section may be disregarded for purposes of determining the recipient's eligibility for, or the amount of, any other Federal or Federally supported assistance, except that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs shall not exceed the total cost of attendance, as defined in section 472 of the Higher Education Act of 1965 [20 USCS § 1087II], and except that the State agency shall take appropriate steps to prevent duplication of benefits under this and other Federal or Federally supported programs.

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(6) The program is coordinated with other appropriate education and training programs.

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Can a part-time student receive ETV funds? The first source for interpreting a statute is its plain language. There is nothing in the language above that addresses a student's part- or full-time status. However, Chafee subsection (i) does provide that the voucher "shall not exceed . . . the total cost of attendance" as defined in 20 USCS § 1087I, and § 1081I provides guidance:

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- (i) Educational and training vouchers. The following conditions shall apply to a State educational and training voucher program under this section:
 - (1) Vouchers under the program may be available to youths otherwise eligible for services under the State program under this section.

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- (2) For purposes of the voucher program, youths adopted from foster care after attaining age 16 may be considered to be youths otherwise eligible for services under the State program under this section.
- (3) The State may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as they are enrolled in a postsecondary education or training program and are making satisfactory progress toward completion of that program.
- (4) The voucher or vouchers provided for an individual under this section--
 - (A) may be available for the cost of attendance at an institution of higher education, as defined in section 102 of the Higher Education Act of 1965 [20 USCS § 1002]; and
 - (B) shall not exceed the lesser of \$ 5,000 per year or the total cost of attendance, as defined in section 472 of that Act [20 USCS § 1087II].
- (5) The amount of a voucher under this section may be disregarded for purposes of determining the recipient's eligibility for, or the amount of, any other Federal or Federally supported assistance, except that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs shall not exceed the total cost of attendance, as defined in section 472 of the Higher Education Act of 1965 [20 USCS § 1087II], and except that the State agency shall take appropriate steps to prevent duplication of benefits under this and other Federal or Federally supported programs.
- (6) The program is coordinated with other appropriate education and training programs.

Can a part-time student receive ETV funds? The first source for interpreting a statute is its plain language. There is nothing in the language above that addresses a student's part- or full-time status. However, Chafee subsection (i) does provide that the voucher "shall not exceed . . . the total cost of attendance" as defined in 20 USCS § 1087I, and § 108II provides guidance:

For the purpose of this title, the term 'cost of attendance' means—

- (1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

- (2) an allowance for books, supplies, transportation, and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, for a student attending the institution on at least a half-time basis, as determined by the institution;
- (3) an allowance (as determined by the institution) for room and board costs incurred by the student which—
 - (A) shall be an allowance determined by the institution for a student without dependents residing at home with parents;
 - (B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and
 - (C) for all other students shall be an allowance based on the expenses reasonably incurred by such students for room and board;
- (4) for less than half-time students (as determined by the institution) tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (8));
- (5) for a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;
- (6) for incarcerated students only tuition and fees and, if required, books and supplies;
- (7) for a student enrolled in an academic program in a program of study abroad approved for credit by the student's home institution, reasonable costs associated with such study (as determined by the institution at which such student is enrolled);
- (8) for a student with one or more dependents, an allowance based on the estimated actual expenses incurred for such dependent care, based on the number and age of such dependents, except that—
 - (A) such allowance shall not exceed the reasonable cost in the community in which such student resides for the kind of care provided; and

- (B) the period for which dependent care is required includes, but is not limited to, class-time, study-time, field work, internships, and commuting time;
- (9) for a student with a disability, an allowance (as determined by the institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies;
- (10) for a student receiving all or part of the student's instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining costs;
- (11) for a student engaged in a work experience under a cooperative education program, an allowance for reasonable costs associated with such employment (as determined by the institution); and
- (12) for a student who receives a loan under this or any other Federal law, or, at the option of the institution, a conventional student loan incurred by the student to cover a student's cost of attendance at the institution, an allowance for the actual cost of any loan fee, origination fee, or insurance premium charged to such student or such parent on such loan, or the average cost of any such fee or premium charged by the Secretary, lender, or guaranty agency making or insuring such loan, as the case may be. [Emphasis added]

This definition acknowledges that students may have part time status. For example, the cost of tuition and fees is based on the amount "normally assessed a student carrying the same academic workload as determined by the institution" (subsection (1)), and students who are less than half-time may receive only tuition, fees and an allowance for only books, supplies, transportation and dependent care expenses (subsection (4)).

Thus, we conclude that that a youth may attend school less than full time and still be eligible for ETV funds.

Is ETV available for a youth who is 18 years of age or older and committed to the state's child welfare agency? On its face, Chafee subsection (i) does not prohibit funds from being used for committed youth over 18 years of age. In fact, the intent of Chafee can be read to support such a use. Chafee subsection (a) provides:

- (a) Purpose. The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted--
- (1) to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance

abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);

- (2) to help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;
- (3) to help children who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions;
- (4) to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;
- (5) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; and
- (6) to make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care.

Further support comes from the federal Children's Bureau, which posted the following on its program manual web site:

3.1G INDEPENDENT LIVING, Certifications and Requirements, Room and Board.

Question 4. May a State use Chafee funds to provide room and board for youth (between the ages of 18-21) who voluntarily remain in foster care?

Answer: Although the law does not expressly contemplate youth ages 18-21 in foster care, allowing room and board for these youth accords with the statutory purposes identified in sections 477(a)(1-5) of the Act. Therefore, it is permissible to expend Chafee funds for youth between the ages of 18-21 who voluntarily remain in State foster care including room and board services. However, a State may not require youth to remain in foster care over the age 18 in order to receive CFCIP services. The certification at section 477(b)(3)(A) stipulates that the State will serve youth who have left foster care because they have attained 18 years of age. Requiring a youth to remain in foster care to receive services contravenes this certification. The State must also meet the Federal non-supplantation requirement for youth ages 18-21. Federal funds spent for room and board for youth 18-21, both in and out of foster care, are subject to the 30 percent expenditure limitation found at section 477(b)(3)(B)

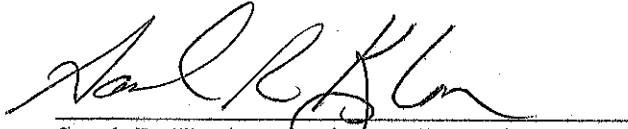

Source: 7/25/02

Legal Reference: Social Security Act - section 477

(http://www.acf.hhs.gov/programs/cb/laws_policies/laws/cwpm/questDetail.jsp?QAId=988)

Thus, we conclude that ETV available for a youth who is 18 years of age or older and committed to the state's child welfare agency.

Prepared by:


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